IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 05 -07-2007

CORAM

THE HONOURABLE MR.JUSTICE ELIPE DHARMA RAO

AND

THE HONOURABLE MR.JUSTICE S.PALANIVELU

WRIT PETITION No.13434 OF 2006

Oriental Bank of Commerce,
rep.by its Chief Manager
Mr.M.O.Mathai,
Overseas Branch, Nandanam,
Chennai-35. ... Petitioner

-vs-

1.The Debt Recovery Appellate Tribunal,
Chennai-2.

2.Mr.P.Shamil Ahmed

3.The Recovery Officer-II,
Debt Recovery Tribunal-I,
Chennai-2. ... Respondents

For appellant : M/s.Murthi & Vasan

For respondent 2 : Mr.Hajee K.A.Md. Mustafa

Petition under Article 226 of the Constitution of India, praying for issuance of a writ of certiorari.

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O R D E R

S.PALANIVELU,J.

This Writ Petition is filed for issuance of a writ of certiorari, to call for the records of the first respondent in M.A.No.9 of 2006, dated 26.04.2006, and quash the same.

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2. The factual matrix of the case is as mentioned below :

2.1. The petitioner bank filed O.A.No.516 of 1998 on the file of Debt Recovery Tribunal-I, Chennai, against the third respondent and others, for recovery of a sum of Rs.1,10,46,655/- and the said O.A.was allowed, as prayed for, on 26.06.2001. Subsequent to the said order, the bank preferred D.R.C.No.156 of 2001 on the file of Recovery Officer-II of Debt Recovery Tribunal-I, for realisation of the decretal amount. The Recovery Officer-II also initiated proceedings to sell the immovable properties mentioned under item Nos.1 to 6 of the Recovery Certificate, which were equitably mortgaged by the defendants with the petitioner bank, as security. Auction notification was published in newspapers on 25.12.2004. On 11.01.2005, the properties were auctioned by the Recovery Officer-II. In the said auction, the second respondent emerged as the successful bidder. On 11.02.2005, the petitioner bank addressed a letter to the Recovery Officer, stating that even though the upset price for item No.6 was mentioned as Rs.2.00 lakhs, the value of the said property is Rs.10.00 lakhs; it was a mistake by oversight and, hence, a request was made not to confirm the sale and to initiate the corrective action. Thereafter, on 18.02.2005, the Recovery Officer-II passed an order, stating as follows :

> "AND Whereas on perusal of the Title Deeds and other Original Documents relating to the auctioned properties it is found that in respect of the Item No.5, the boundaries and dimensions as specified in the document does not conform with the description provided in the schedule to the DRC based on which the sale proclamation was issued. As such, the description, extent and sale consideration will have to be determined afresh. Further, in respect of Item No.6, the original title deeds are not readily traceable, hence, it is not found feasible to provide necessary documents enable proper conveyance of the title to the successful bidders;
>
> NOW, Therefore it is hereby ordered that the auction sale conducted in respect of Item No.5 and Item No.6 stands cancelled and the sums paid by the successful bidders will be

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adjusted towards sale consideration and poundage fee in respect of Item Nos.1 & 2 and the balance remaining if any may be claimed by them as refund from the undersigned."

2.2. As against the above said order of the Recovery Officer-II cancelling the sale, the auction purchaser/second respondent filed M.A.No.75 of 2005 on the file of Debt Recovery Tribunal-I, Chennai, and the said petition was dismissed on 23.09.2005.

2.3. Further aggrieved over the order passed by Debt Recovery Tribunal-I, the second respondent preferred an appeal before Debt Recovery Appellate Tribunal, Chennai, in M.A.No.9 of 2006.

2.4. After hearing both the parties, the Appellate Tribunal allowed the appeal, directing the Recovery Officer-II of Debt Recovery Tribunal-I, Chennai, to execute a sale deed in favour of the appellant therein, who is the second respondent herein, after complying with all the requirements as required under law, within one week from the date of receipt of a copy of the order.

2.5. As against the said order of Debt Recovery Appellate Tribunal, the petitioner bank is now before this Court with this Writ Petition.

3. The point that arises for consideration before this Court is, whether the order of cancellation of auction sale, passed by the Recovery Officer-II, is legally valid ?

4. The entire issue revolves around the letter sent by the petitioner bank, dated 11.02.2005, and the subsequent order of cancellation, passed by the Recovery Officer-II. The auction sale was held on 11.01.2005. In the paper publication, the upset price of Item No.6 was mentioned as Rs.2.00 lakhs. But, the bank mentioned that the actual value of the property is Rs.10.00 lakhs as per the Valuation Report already submitted to the Recovery Officer and, by oversight, the upset price was wrongly mentioned as Rs.2.00 lakhs instead of Rs.10.00 lakhs. A further request was made by the bank not to confirm the sale.

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5. On 18.02.2005, the Recovery Officer-II passed an order, cancelling the auction sale in respect of Item Nos.5 and 6, and directing for payment of the sale price to the auction purchaser, by adjusting the amount in sale consideration and poundage fee in respect of Item Nos.1 and 2. In the said order, the Recovery Officer had stated that with reference to Item No.5, the boundaries and dimensions as specified in the document did not conform to the description provided in the schedule to the DRC and, in respect of Item No.6, the original title deeds were not readily traceable and, hence, it was not found feasible to provide necessary documents, for proper conveyance of title to the successful bidders.

6. The order passed by Debt Recovery Tribunal-I would indicate that prior to the hearing of the matter, a report was called for from the Recovery Officer with regard to the factors, which led to the passing of his proceedings, dated 18.02.2005. The contents of the report filed by the Recovery Officer throw much light on the circumstances of this case. In the said report, the Recovery Officer mentioned that after conducting the auction, his office made sincere efforts to identify the documents for the purpose of providing proper conveyance of title deeds to the successful bidder with regard to Item No.5, but, it was found that the boundary descriptions mentioned for the said item did not tally with the ones described in the auction notice, on the basis of which a Recovery Certificate came to be issued. So, he expressed his inability to confirm the auction, portraying it as an improper one, which might bring about multiplication of proceedings. It was also stated that the Recovery Officer coordinated with the bank officials in this regard and came to a conclusion that it might not be proper to proceed further with the auction proceedings. It also transpired to him that the title deeds for Item No.6 were not readily traceable, which would also pave way to complications in further course of action in the auction proceedings. Though it is mentioned in the report that the auction purchaser had not paid the entire sale consideration within the stipulated time, his contention here is that he has deposited the entire amount.

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7. Whatever it may be, the fact remains that the sale is clouded with certain irregularities, which might have crept in the proceedings either by inadvertence of the Recovery Officer or the bank officials. Any way, complications are bound to occur in future and the Court has to take care of interest of parties.

8. Debt Recovery Tribunal-I has observed that even though the auction purchaser may be a successful bidder, he cannot not claim for confirmation of sale as of right, when irregularities or complications are ascertained subsequently.

9. It is noteworthy to mention here that the petitioner bank addressed a letter to the Recovery Officer, stating, that in publication in various newspapers, for Item No.6, the upset price is mentioned as Rs.2.00 lakhs, however, as per the valuation report already submitted, the value of the said property is Rs.10.00 lakhs, but, by inadvertence, the upset price of the said property has been published as Rs.2.00 lakhs instead of Rs.10.00 lakhs and, accordingly, requested not to confirm the sale and, instead, to initiate corrective action. Even though the said letter was received by the Recovery Officer, he has not specifically mentioned the variation in the upset price with regard to Item No.6 in his proceedings, dated 18.02.2005, but, he has clearly mentioned that since the title deeds are not readily traceable, it is not found feasible to provide necessary documents to the successful bidder.

10. Debt Recovery Appellate Tribunal, in its order, has stated that the auction purchaser filed an affidavit on 15.04.2005, stating that in respect of Item No.5, he will not make any claim or objection on the ground that the boundaries and dimensions do not conform to the description provided in the Schedule to the DRC and, as far as Item No.6 is concerned, he has sworn to the effect that he would be satisfied with the certified copy of the registered sale deed, dated 12.08.1993, bearing document No.2365 of 1993, and he would not make any claim as against the respondent bank or against the Recovery Officer-II, DRT-I, Chennai, with a request to confirm the auction. It is also observed in the order of Debt Recovery Appellate Tribunal that neither the Recovery Officer nor the Presiding Officer of Debt Recovery Tribunal has taken into consideration the above said affidavit of undertaking sworn to by the auction purchaser and that when the said properties are

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sold on 'as is where is condition', the Tribunal would not be held responsible and liable for any encumbrance of the properties.

11. This Court is not in agreement with the observations made by Debt Recovery Appellate Tribunal, for the reason that it could not be foreseen that the judgment debtors would not agitate against the irregularities in the conduct of the auction proceedings, on the basis of the mis-descriptions and variations of sale price with regard to Item Nos.5 and 6. Defendants in the O.A. themselves filed a memo before Debt Recovery Tribunal-I, not pressing I.A.Nos.1021 of 2001 and 810 of 2004. Even though they have not pressed the said applications, it will not remove the irregularity occurred in the auction sale. Moreover, this Court is at a loss to discern now as to who are the parties interested in the properties subjected to auction, other than the defendants. When that be so, there is every possibility for them to focus a scathing attack on the sale.

12. When a Court sale is conducted, it should be free from any illegality or irregularity. Whenever it is brought to the notice of the Court that certain irregularity or illegality is crept in the sale proceedings, particularly before the confirmation of sale as found in these proceedings, it is incumbent upon the Court to rectify it by all means and to convey a better title to the auction purchaser. Since Court itself conducts the sale, its duty is to apply its mind to the material factors, bearing on the reasonableness of the price offered. As per the settled principles, failure to apply its mind to this aspect of conduct of the sale may amount to material irregularity. Since the act of the Court shall harm no one, mis-description of the property also would be a material irregularity. The Court has to guard against 'substantial injury' to the auction purchaser and other parties concerned. 'Injury' means, loss, which is wrongful, and 'substantial' means, actual and not imaginary. 'Irregularity' means, not being in conformity to the rules prescribed for regulating the auction sale. The word 'material' means, real, not merely formal and academic.

13. As far as this case is concerned, the Recovery Officer, after due verification, has come out with his proceedings, dated 18.02.2005, cancelling the auction in respect of Item Nos.5 and 6. This Court finds nothing wrong in the tenor of the said proceedings.

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14. Under the circumstances, we hold that the order passed by Debt Recovery Tribunal-I, on the strength of communication and report of the Recovery Officer, does not suffer from any illegality or infirmity and that the observations and findings contained in the order of Debt Recovery Appellate Tribunal could not bear the seal of approval of this Court. In order to avoid multiplicity of proceedings, it is just and necessary to confirm the cancellation of auction, held for Item Nos.5 and 6. It is necessary to mention here, that, hereafter, due steps should be taken for auction of the properties at the instance of the Recovery Officer and that the present auction purchaser may also participate and bid the auction, so that no prejudice or illegal injury would be caused to anyone.

15. In view of what is stated above, this Writ Petition is allowed, setting aside the order of Debt Recovery Appellate Authority and restoring the order of Debt Recovery Tribunal-I. No costs. Consequently, the connected W.P.M.P.No.15002 of 2006 and W.V.M.P.No.1685 of 2006 are closed.
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Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1.The Debt Recovery Appellate Tribunal,
Chennai-2.

2.The Recovery Officer-II,
Debt Recovery Tribunal-I,
Chennai-2.

+2cc to Mr. Hajee K.A. Md. Mustafa, Advocat sr no. 40197
+ one cc to M/s. Murthi & Vasan, Advocate sr no. 40280

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nm(10.07.07)

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